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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,897	01/29/2002	Toyoki Ue	JEL 31056I	5161

7590 09/24/2003

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EXAMINER

GANTT, ALAN T

ART UNIT	PAPER NUMBER
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2684

DATE MAILED: 09/24/2003

*23*

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/057,897

Applicant(s)

UE ET AL.

Examiner

Alan T. Gantt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 31-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/424,843.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 7/15/03 have been fully considered but they are not persuasive. Applicant primarily argues that:

(a) The present claims calls for the transmission rate control apparatus to receive a received quality measure at a communication terminal whereas Mahany receives a rate indication signal indicating a rate selection already made at the mobile station.

(b) An inherency rejection based on Mahany is unwarranted because the communicated data rate selection does not always include an indication of measured signal quality.

(c) Mahany fails to teach the subject matter of claim 35 that recites a communication terminal apparatus comprising monitor circuitry that monitors a received quality, judgment circuitry that judges whether the received quality deteriorates, and transmission circuitry that transmits the received quality at a timing at which the judgment circuitry judges that the received signal deteriorates.

Regarding (a), as previously stated, due to the broadness of applicant's claims, it is felt that applicant's claim limitation are still met by Mahany. Mahany contains circuitry that realizes that the previous polling caused the mobile station to choose a best transmission rate that it transmits back to the apparatus. The apparatus knows by what transmission rate was received that the received rated is the rate that the terminal is telling the apparatus is the measured

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received quality. The apparatus has circuitry that changes the transmission rate it transmits to the communication terminal based on what it has received from the terminal. When the polling indicates that the rate should be decreased, the apparatus does follow suit.

Regarding (b), inherency would still hold for claims 32 and 34, since the transmission rate is devised initially for a channel condition by a polling process. Since this polling is performed at regular intervals, if it is found that the channel conditions are back at the initial value, this same process will yield an identical transmission rate value for the identical channel condition and this shows inherency.

Regarding (c), Obviously, the communication terminal monitors the received quality using the polling signals and makes the judgment as to whether the received quality deteriorates. Further when the judgment circuitry determines that the received quality is not at a level that accepts the rate that the apparatus is sending, it transmits at a rate that indicates the received quality.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahany et al.

Regarding claims 31, 33, and 35; Mahany discloses a mobile radio data communication system that may communicate with mobile units at a higher or lower data rate depending on channel conditions. Mahany allows for a polling signal to be sent from the base station, which may also constitute a test signal that is evaluated or measured at the mobile units. The remote unit responding to the polling signal may transmit as its response a selection signal specifying the data rate that has been determined to be optimum as a result of the test signal. Once the response is received at the base station, there is a provision of control means [transmission rate control circuitry] for automatically switching between two or more data rates and for adaptively selecting the best data rate dynamically according to changing operating conditions (Abstract and col. 2, lines 35-57 and col. 21, line 62 to col. 22, lines 44).

Regarding claims 32 and 34, inherently, the Mahany system changes the data rate back to the original value as the channel condition returns to the initially reported condition since each response by the mobile unit contains a report of its measured channel conditions using the base stations polling and test signal.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

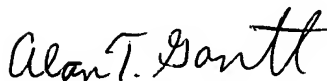
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication from the examiner should be addressed to Alan Gantt at telephone number (703) 305-0077. The examiner can normally be reached between 9:30 AM and 6 PM within the Eastern Time Zone. The group FAX number is (703) 872-6306.

Any inquiry of a general nature or relating to this application should be directed to the group receptionist at telephone number (703) 305-4700.



Alan T. Gantt

September 19, 2003

  
NAY MAUNG  
PRIMARY EXAMINER